

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,	:	Case No. 3:05CR765
v.	:	
Michael Ray Shaffer	:	<u>ORDER</u>

This is a criminal case in which several pretrial matters have been referred to the undersigned for initial hearing and determination. The following motions are pending: Defendant's Motions for Bill of Particulars, for Discovery, and for Notice of Intent to Use Evidence (Docket Nos. 8, 9 and 10). The government has filed its consolidated response to defendant's motions and a request for reciprocal discovery (Docket No. 11). The magistrate's order as to the pending motions follows.

Introduction

Defendant was charged in an indictment filed July 6, 2005, with willfully and knowingly devising a scheme to defraud and to obtain money and property by means of false pretenses through the use of a private and commercial interstate carrier in violation of 18 U.S.C. §1341. If convicted as charged, defendant is subject to a twenty year term of imprisonment and a fine of up to \$250,000. Defendant will also be required to pay a \$100 mandatory special assessment. Any term of imprisonment will be followed by a term of

supervised release of three years.

I. Motion for Bill of Particulars (Docket No. 8)

Defendant seeks an order requiring the government to file a bill of particulars specifically setting forth the nature of the offenses charged in the indictment, including information received by law enforcement authorities, the exact date, time and place of the alleged offense, the method or means by which the offense was allegedly committed and the identity of its witnesses. Defendant contends that the requested information is essential to enable him to prepare his defense, to minimize surprise at trial and to protect him against subsequent prosecutions for the same alleged conduct.

In its response, the government argues that the motion should be denied as the government has provided open file discovery permitting defendant to learn all aspects of the government's case, including review of the case agent's narrative report and supporting documents. The government contends that a bill of particulars would serve no further purpose.

The purpose of the bill of particulars is to insure that defendant understands the nature of the charges to enable adequate trial preparation, to avoid the danger of unfair surprise at trial and to enable defendant to plead double jeopardy if he is later charged with the same offense. *United States v. Salisbury*, 983 F.2d 1369, 1375 (6th Cir. 1993); *United States v. Birmley*, 529 F.2d 103, 108 (6th Cir. 1976). Here, the indictment sets forth the essential facts constituting the offenses charged; consequently, a bill of particulars is not required. *See, United States v. Mahar*, 801 F.2d 1477, 1503 (6th Cir. 1986). Additionally, the government has provided defendant open file discovery. Accordingly, the Motion for Bill of Particulars (Docket No. 104) is overruled as moot.

III. Motion for Discovery (Docket No. 9)

Defendant seeks discovery pursuant to Fed.R.Crim.P. 16. The government represents, however, that the entire case file, including a complete copy of the case agent's narrative report with supporting documents, is available for inspection by defendant. Accordingly, defendant's motion for discovery is overruled as moot.

II. Motion for Notice of Intent to Use Evidence (Docket No. 10)

Defendant requests notice as to all evidence which the government intends to use in its case in chief and which is subject to discovery under Fed.R.Crim.P. 16. The government responds that it has provided open file discovery and may use any evidence which it has obtained in presenting its case in chief. Accordingly, this motion is overruled as moot.

III. Request for Reciprocal Discovery (Docket No. 11)

The government has requested, pursuant to Fed. R. Crim. P. 16(b), reciprocal discovery from defendant. Such request is granted.

For the foregoing reasons, defendant's motions for a bill of particulars (Docket No. 8), for discovery (Docket No. 9) and for notice of intent to use 404 (b) evidence (Docket No. 10) are overruled as moot. The government's request for reciprocal discovery (Docket No. 11) is hereby granted.

So ordered.

/s/ Vernelis K. Armstrong
Vernelis K. Armstrong
United States Magistrate Judge